



PUBLIC DEFENDER NEWS

Looking Ahead

Rhonda Schaffer, Director

The longest day of the year brought rain and snow. Summer in Montana!

Last week, the regional managers and executive management team met in Lewistown to develop a strategic plan and discuss how to make extraordinary things happen in our agency. I was very pleased with the progress. The number one item identified as needing immediate attention was communication. The team focused on data content and the mechanism to disseminate the information (i.e. newsletter, emails etc.).

What does this mean? In a few weeks you will receive a Survey Monkey asking you to weigh in. This is your chance to participate in establishing the way our agency will communicate in the future. Thank you in advance for your contribution in the survey.

As I mentioned in my last update, we are working with the Governor's Budget Office to establish new pay matrix guidelines, and I am hoping to hear something this week. Once we have approval, we will immediately begin work with the union regarding contract negotiations. Again, stay tuned.

I hope the rest of your summer is pleasant!

Rhonda



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Special points of interest

- Word Tips and Tricks
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Objection!

Know When the Rules of Evidence Apply . . . and When They Don't

James Reavis, Assistant Appellate Defender

In the world of video games, there is no lawyer more famous than Phoenix Wright, the brash young defense attorney who will go to the ends of the earth to find his client innocent, and usually discover the true killer to boot.

When Phoenix finds something inconsistent with the evidence, he slams his hands on the table, shouts “Objection!”, and takes down the prosecutor’s flimsy logic. It makes for great drama, but sometimes terrible law.

Phoenix doesn’t always understand when the Rules of Evidence apply and when they don’t. But you should. After all, you are doing something much more exciting than Phoenix—you are representing real clients in real cases whose lives will be changed because of your advocacy and hard work.

As a public defender, you appear in court almost daily. As you are preparing your case, ask yourself two questions.

1.) Do the Rules of Evidence apply in this proceeding? 2.) How does my litigation strategy change based on the answer?

To figure out if the Rules of Evidence apply to your case, turn to Rule 101. The default answer is “yes,” but with exceptions that are very significant! As Rule 101(c)(3) provides, the Rules of Evidence do not apply to sentencing hearings, revocation actions, disposition hearings in youth court, extradition actions, bail hearings, and preliminary examinations.

If the Rules of Evidence apply, such as during a trial or an evidentiary hearing on a motion to suppress, then you have your rulebook to keep the prosecutor’s evidence out. You must also understand the Rules of Evidence to make sure your proffered evidence is properly admitted.

If the Rules of Evidence don’t apply, your standard bevy of hearsay and character evidence objections are not going to help you. But that is not a reason to be discouraged; it just changes your strategy. The prosecutor can get more evidence into the record, but so can you. So get that document or photograph admitted without having to meet every single foundational step. Dig into some hearsay (within reason) with a witness if it will help your case. If it’s fair

game for the prosecutor, it’s fair game for you too.



Even if the Rules of Evidence do not apply in your proceeding, that does not mean you are out of options when the prosecution oversteps their bounds. You always have a right to have your proceeding handled in a manner that comports with due process. Some good cases to help you understand these rights are *State v. Macker*, 2014 MT 3, ¶ 9; *State v. Finley*, 2003 MT 239, ¶ 31; and *State v. Aragon*, 2014 MT 89, ¶ 12.

In summary, your client has the right to be represented by counsel, notice of the proceeding or violation, an opportunity to be heard by a neutral arbiter, the right to confront and cross-examine witnesses, disclosure of evidence against them, the right to present evidence and witnesses on their behalf, and the right to explain, argue and rebut any information presented. If these basic rights are not being met, you can and should object.

Finally, rules concerning privilege always apply, regardless of the proceeding you are in. Rule 101(b) makes that clear. You can always assert the attorney-client privilege or other privileges when needed.

This advice, of course, is just a guideline. Sometimes when you see something going wrong you have to be like Phoenix and slam your hands on the table and shout “Objection!” as loudly as you can. And that’s ok. But by being conscious of the applicability of the Rules of Evidence you can spare yourself from frustrations with the objections that will go nowhere, and you can have your “Objection!” ready when it really counts.

Central Services Team Update

Carleen Green, Division Administrator



Happy Summer, everyone!

Please join me in a warm welcome for our new accountant, Jennifer Kueffler. Jennifer has many years of accounting experience, and will be a tremendous asset to CSD

and all of OPD. Her primary duties will include budgeting, reporting, and accounting for public defender fees.

The online application debuted statewide on June 17. Many thanks to Kyle Belcher for his hard work in bringing this project to fruition. Special thanks too, to Pam Webster in Kalispell for helping to work out the kinks over the last several months, and to all of you for your suggestions. As always, please call us if you have eligibility staff turnover or other short-term staffing issues, need in-person or remote training, or have ideas on how to improve the eligibility process.

We had an excellent turnout for the Support Staff Conference in May. It was great to see you all in Butte, and we appreciate the feedback we received through the post-conference survey. All of the conference handouts are available on the public share drive [here](#). Please share your suggestions for additional training at any time. Not only has Rhonda committed to making support staff training an annual event, but we are working on other ways to respond to your training needs.

Fiscal year-end has arrived! Please continue to process any outstanding bills for FY 19 as quickly as you receive them so we have everything we need to finish closing the books in July.

Thank you all for everything you do in support of our mission, and let us know how we can better support your offices.



Word Tips and Tricks

Here are a few of the Word tips we learned at the Support Staff conference. The complete handout is available on the public share under [Staff Resources](#). If you need a refresher, or if you weren't at the conference, contact [Cathy Doyle](#) for more detailed information.

Quick Access Toolbar

The QAT is usually located above the Ribbon, but you can also choose to view it below the Ribbon. The default tools include undo, redo, open file, and others that are even easier to execute using shortcut keys (see our



favorites in the handouts!). You can replace or add to the QAT with your most used tools or the ones you have trouble navigating to.

Status Bar

The Status Bar at the bottom of the page can give you all kinds of information at a glance, including how many words and pages are in your document, what page and section you are on, whether Track Changes is on or off, and more. Right click on the Status Bar and choose the ones of most interest to you.

Quick Parts

Quick Parts can be used for electronic signatures, your favorite header, page numbering and more. It saves both the text AND the formatting. Once you have created a Quick Part, you can type its name and hit Enter or F3 to insert it, or scroll through the list. Go to Insert/Quick Parts/Save Selection to Quick Parts Gallery to create a QP. Outlook uses QPs, too, but they aren't shared between Outlook and Word.

Short Cut Keys

Keyboard companion templates for both Office and JustWare shortcut keys were included in the handouts. Check them out at the link above!

Technology Resources for YOU!

Did you know you can access JustWare, your state email, CRM and your OneDrive files from outside the office? Do you know what to do when you (gasp!) leave your RSA token behind? Information on all this and more is available on our website under the Employees/Technology Resources [tab](#). Check it out, and bookmark that page for future reference! (And while you're out there, set up your RSA security questions so you can get a temporary code if needed.)



Palindrome, Palindrome, Where Do You Roam?

A palindrome is a word, phrase, or sequence that reads the same backward as forward. According to *The Oxford English Dictionary*, the word is based on Greek root words meaning "back" and "running." The world's longest palindrome is (allegedly) 21,012 words! Not quite sure what we're getting at? Here are a few simple ones to get you started (ignore punctuation for these):

Taco cat
Race car
So Ida, adios!
Dammit, I'm mad!
Never odd or even
Murder for a jar of red rum
Borrow or rob?
A man, a plan, a canal: Panama!
Was it a car or a cat I saw?
King, are you glad you are king? (follow the words, not the letters for this one)

For more palindrome fun, check out the Riders in the Sky's [Ballad of Palindrome](#).

OUR MISSION

We provide effective professional legal services with equal access to quality client-centered representation.

OUR VISION

As trained legal professionals we strive to represent our clients in an effective and efficient manner to ensure a more fair and balanced justice system. We are dedicated and committed to improving overall outcomes for our clients and addressing the conditions that led to their involvement with the justice system.

Tips for Better Teamwork

Team understands the goals and is committed to attaining them



Creativity, innovation, and different viewpoints are expected



Communication is open, honest, and respectful



People are comfortable taking reasonable risk



Members of the team make high quality decisions together



Training Office Docket

Brent Getty, Deputy Training Development Coordinator

During May and June, the Training Department hosted live trainings for our newest public defenders, the support staff, and juvenile defenders from across the West.

Expanded New PD Training

The New Public Defender Training included expanded small group activities and more emphasis on doing rather than listening. Cathy Huston, an OPD investigator from Havre, and Joan Burbridge, a PD from Missoula, talked about working as an investigative team. Greg Rapkoch, a PD from Kalispell, led an expanded discussion of developing theories of the case, including a brainstorming small group session. Brian Smith, a Contract PD from Missoula, recruited mock jurors to participate in voir dire. We also introduced a questioning exercise involving wooden blocks to illustrate the principles and pitfalls of examining witnesses. Thanks to all the faculty that made this training a success.

Juvenile Defense in the Spotlight

Over 40 juvenile defenders descended on the Alexander Blewett III Law School at the University of Montana for the Western Juvenile Defender Center Leadership Summit co-hosted by WJDC and OPD. Marsha Levick of the Juvenile Law Center in Philadelphia expanded the understanding of the reasonable child standard from *JDB v. North Carolina*. Jackie Bullard of the Illinois Juvenile Defender Resource Center discussed how to effectively engage in appellate advocacy given the differing challenges of representing kids. Ji Seon Song from Stanford Law School brainstormed the multitude of motions possible in juvenile cases. And Anne Lee from TeamChild in Seattle led a discussion of how juvenile



defenders can be policy changers. Throughout it all, the Summit was an opportunity for juvenile defenders to communicate with each other about advancing juvenile advocacy. This training could not happen without the efforts of Susan Roske of the Clark County (NV) PD Office, George Yeannakis of the Washington State Office of Public Defense, and the other faculty.

Annual Conference is Taking Shape

We continue to make progress on planning for the annual conference in Butte on October 9 – 10, 2019. I hope to have a draft agenda out in early July. Several of you have proposed excellent suggestions for the conference or other trainings. We still need suggestions for breakout sessions. If you've encountered an issue or just want a presentation on a topic, please contact the [training department](#) with your suggestion. Every one of us knows of something that we can make better, so tell us how we can help.

And don't forget, presenting at a training is a great way to practice your public speaking and persuasion skills.



Mastering JustWare: JW Update Notifications



Marsha Parr,
Case Management Support

As JW continually changes and progresses, we came up with a new information sharing process that we are excited to implement. We've created an ADMIN case within JW to track changes (business rules, documents, procedures etc.), enabling us to document the changes and keep you updated as well.

We will have two designations: Critical and Non-Critical. If we deem something Critical (example: statewide document changes), JW will send an email notification to the Regional Managers and Super Users. The Super Users can then disseminate to their offices.

Non-Critical updates will NOT be sent out as an email. However, once a week we'll send a report showing ALL updates for the past seven days; both Critical and Non-Critical. This report will also be available to Managers and Support Staff anytime they want to review changes. In JW, look under REPORTS: Support Staff Folder: OPD JustWare Change Log.

Again, we're excited at the prospect of being able to keep everyone informed of updates and changes as we continually strive to improve JW!

Marsha

EXAMPLE JW NOTIFICATION

-----Original Message-----

From: JWNotificationTEST@mt.gov <JWNotificationTEST@mt.gov>

Sent: Monday, June 17, 2019 1:59 PM

To: Belcher, Kyle <KBelcher@mt.gov>

Subject: JustWare Change ~ Important

Hello,

We have made the following critical change to JustWare:

Change Type: JW-View Change

Item(s) Changed: OPD Name View

Details of the Change:

Due to popular demand, we have made the following changes to the OPD Name view/session:

- 1) There is now a date filter applied to the 'Tasks' tab. This was changed because by default, the name view shows ALL tasks regardless of whether they were completed or not. For people with lots of tasks (Eligibility Staff) the view took forever to load. Now the view will only show 90 days in the past and everything in the future. If you need to go farther back, you can change the FIRST date parameter (Range Start). The End Date (Range End) does not do anything.
- 2) We have added the 'Title' field to the Events tab. IMPORTANT: you must add this to your view by clicking the Customize Snap-in Button (Gear Cog Icon) and checking the 'Title' field.

-----END-----

EXAMPLE JW REPORT

OPD JustWare Change Log

Date Change Type Criticality Item(s) Changed

6/14/2019 JW-View Change Non-Critical OPD Name View

Change Detail Changed By

Due to popular demand, we have made the following changes to the OPD Name view/session:

- 1) There is now a date filter applied to the 'Tasks' tab. This was changed because by default, the name view shows ALL tasks regardless of whether they were completed or not. For people with lots of tasks (Eligibility Staff) the view took forever to load. Now the view will only show 90 days in the past and everything in the future. If you need to go farther back, you can change the FIRST date parameter (Range Start). The End Date (Range End) does not do anything.
- 2) We have added the 'Title' field to the Events tab. IMPORTANT: you must add this to your view by clicking the Customize Snap-in Button (Gear Cog Icon) and checking the 'Title' field.

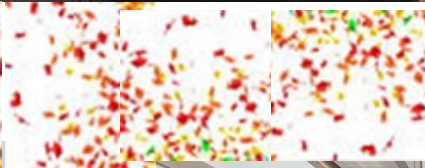
A Good Time Was Had By All!

The Director's Office and Central Services Division hosted pre- and post-Support Staff Conference gatherings in their office in Butte. We had a great turnout, both for breakfast on Wednesday and lunch on Thursday. See you all next time!



Left: Mary Brown (Anaconda) and Britton Frisbie (Billings) getting chummy.

Below: Marilyn Pulver (Billings Conflict) and Carleen Green (CSD Administrator) lit up the room with those great smiles!



Above: A few of our breakfast guests, from the Butte, Miles City, Billings, and Kalispell offices.



Left: Travis Tilleman (Human Resources Administrator) visited with Region 9 staff Margarita Pazos, Vickie Gerber and Jan Cates.

2019 Legislative Overview

Nate McConnell, Training Coordinator

This is a brief recap of bills that became law in the 2019 Legislative Session. For a more complete overview, please look at the 2019 Legislative Update PowerPoint used in the June 12 webinar. It's on the OPD Public Share [here](#), or if you can't access it and would like a copy, email [Nate](#).

Privacy

- HB 192: Expands privacy in communications to include purpose must be to "terrify, intimidate, threaten, harass, or injure" and person publishes without consent.
 - Codifies Montana Supreme Court findings in *Duggan* case, removing bad or threatening language from prima facie. HB 228 does this, too.
- HB 228: Removes prima facie evidence of using bad or threatening language from statute.
- SB 262: Officers may not obtain DNA sample from minors unless sexual offense charged; consent of parents; or Court order.

Youth Supervision

- OPD now appointed for parole revocation hearings. Effective date 7/1/19.

Elder

- SB 324: "Personal degradation" added to definitions; intent to demean or humiliate. Effective date 5/7/19.
- HB 334: Exploitation definition expanded to include "deception, duress, menace, fraud, undue influence, or intimidation" in obtaining funds.

Consent (*Applies to sexual intercourse or sexual contact per §45-5-501, MCA, unless otherwise noted*)

- HB 282: Patient in professional counselor-patient relationship is not capable of granting consent. Effective date 4/18/19.
- SB 261: Witness cannot give consent to police officer directly involved in case AND parent can't give consent to DPHHS employee directly involved in underlying case.
- HB 173: Elementary or secondary school students incapable of consenting to anyone who has ever had authority over the student. This includes practically anyone who has ever worked at a school, from the janitor to the principal.



- SB 132: Cannot assist someone in gaining employment in a school setting if person knows or "has probable cause to believe" that the potential employee engaged in an illegal act(s) against a child.

Stalking

- SB 114: Three major parts:
 - Orders of protection may now include sexual abuse of children and human trafficking;
 - Stalking definition expanded to include "course of conduct" (two or more acts) that the person knows or should know causes a reasonable person to fear for safety or suffer substantial emotional distress; AND
 - Penalty increased to a FELONY for second offense within 20 years OR violates order of protection, even for a first offense.
- Effective date 5/2/19.

Strangulation

- SB 88: Adds strangulation to definition of "crime of violence" to chapter 18, Title 46 in the MCA.

Continued next page

2019 Legislative Update (continued)

Human Trafficking

- SB 147: Two major changes
 - Prostitution – victims of human trafficking cannot consent to prostitution and liability for prostitution expanded for patron to include human trafficking victim
 - Human trafficking penalties increased, including life sentence for aggravated promotion of child prostitution.
 - Effective date 5/7/19.

Pretrial Diversion

- HB 110: Misdemeanors added to pretrial risk assessments; no longer considers “dangerousness or lethality” in PFMA assessments. Effective 2/28/19.

Deferred/Supervision

- HB 463: Probation and Parole no longer involved in filing termination of deferred/suspended sentences. Unclear what OPD’s ongoing role will be, but statute says we are done when sentence is imposed, barring appeal. Effective date 5/8/19.

Theft/Disorderly

- HB 421: Two major changes
 - Theft: Adds jail time to theft where person uses emergency exit.
 - Disorderly: If officer concludes person “creates an articulable public safety risk,” person can go to jail. Need to challenge this on due process grounds!

Children

- HB 640: Statute of limitations for civil liability in child sex abuse cases removed. Felony penalties for failure to report sex abuse. Effective date 5/7/19.

- HB 590: Child interviews of alleged victims and immediate family members *who are under 16 years old* now require Defendant to show “exceptional circumstances” and get an Order from the Court that includes reason for interview and the scope of interview. Effective date 5/8/19.
- SB 155: 25-year mandatory minimum for convictions for sexual intercourse without consent, incest, and sexual abuse of children where victim was 12 years old or younger and person was 18 years old or older. No more exceptions based on psychosexual evaluation.

Driving

- HB 217: No license suspension for nonpayment of fines, costs, or restitution. MVD *must* reinstate upon notification of Court. Applies retroactively.

General Practice

- SB 43: Remote omnibus hearings allowed if neither party objects and Court agrees. Effective date 5/3/19.

Psychosexual Evaluations

- SB 84: Court selects sexual offender evaluator.
 - Allows us to enter the plea, inform the Court that you have a sexual offender evaluation done, and make sure the Court is ok with using that evaluation for sentencing purposes.



A huge THANK YOU to Lynn MacMillan (Conflict Division), and to Emily Copeland and other Central Services Division staff for all their help getting cases closed before fiscal year end!

This really helps us have accurate numbers for our year-end reporting. Y’all rock!